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President: Mr. CONSO (Italy)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. YASSIN** (Sudan) said that his country's constructive contributions at all the stages leading to the Conference reflected its strong support for the establishment of a permanent international criminal court whose existence would make it impossible for those who committed monstrous crimes against humanity to escape punishment.

2. According to the draft Statute, the role of the International Criminal Court (ICC) would be complementary and not parallel to that of national criminal courts. Also, it should not be regarded as a watchdog over national judicial systems.

3. Neither Member States nor international political organs should be permitted to interfere with the Court's activities. In that respect, the International Court of Justice could serve as a model, being a wholly neutral, impartial and independent international judicial body. The Statute of the International Criminal Court should enable it to contribute constructively to peace and security. It would consolidate customary legal principles, while respecting the national sovereignty of States. With the advent of globalization, the aim should be to strengthen international cooperation, while fully respecting the cultural characteristics of each nation. For example, article 3 of Additional Protocol II to the Geneva Conventions unmistakably reaffirmed that national judicial organs were alone responsible for enforcing the principles stipulated in that Protocol and for punishing those who infringed them. That could be guaranteed only if the Prosecutor did not interfere in the affairs of States.

4. He reiterated his commitment to the declarations adopted by the African Permanent Representatives to the United Nations in New York and by the Ministerial Conference of Non-Aligned Movement held in Colombia, as well as the consensus reached by the Arab Group on the establishment of the International Criminal Court at their meeting of May 1998.

5. **Mr. GÜNEY** (Turkey) said that the draft Statute of an international criminal court had been the subject of painstaking in-depth study by the international community for the last decade. The creation of the ad hoc Tribunals for the Former Yugoslavia and Rwanda had highlighted the need for an international criminal court, since the proliferation of ad hoc tribunals might lead to inconsistencies in the development and application of international criminal law. However, some initial lessons could be drawn from the establishment of those temporary specialized Tribunals in approaching the creation of a permanent court.

6. Turkey had, from the outset, supported the creation of a credible, universal, impartial and independent international criminal court to bring to justice the perpetrators of the most serious crimes of concern to the entire international community. The draft Statute should provide assurances that the future Court would complement national courts and that the new regime would not call in question current law enforcement efforts. The Statute should specify the type of act that constituted a crime, and the nature and limits of the penalty imposed.

7. Particular care was needed to ensure protection of the rights of the accused, bearing in mind that in most cases the accused would be tried by judges from different cultural backgrounds. Greater thought should be devoted to

the obligation of States parties to communicate evidence and extradite criminals within defined limits, and to the principle of *non bis in idem*.

8. Crimes were listed in the draft Statute without specifying the international instruments in which they were defined. The crime of aggression and crimes against humanity were not defined with the precision required in criminal law. There was, moreover, no generally accepted definition of the crime of aggression for the purposes of determining individual responsibility and there was no relevant precedent. Aggression was primarily related to action of States and not of individuals.

9. The crime of terrorism, which was linked with transnational organized crime, had already been legally delimited, but the international community had failed to develop a general definition. However, a series of agreements dealing with specific categories of acts which were unanimously condemned had been concluded.

10. States must refrain from organizing or encouraging terrorist activities in the territory of other States and from tolerating activities in their own territory directed toward that end.

11. Systematic and prolonged terrorism was a crime of international concern. A systematic terror campaign waged by a group against a civilian population would be a crime under international law, and, if inspired by ethnic or racial motives, would fall under article 5 of the draft Statute. Terrorism was often sustained by large-scale drug trafficking, which had an undeniable international impact. Those two crimes should therefore be covered under article 5.

12. It should be possible to accept the Court's jurisdiction for all or only some of the crimes referred to in this Statute. He therefore fully supported the "opt-in/opt-out" approach.

13. The right to lodge a complaint should be reserved to States and the Security Council, pursuant to Chapter VII of the Charter. A more liberal system might deter States from becoming parties to the Statute or from accepting the competence of the Court, out of fear of abuses by other States. The prevailing opinion in the Preparatory Committee had been that the Prosecutor should not be empowered to initiate proceedings ex officio. The independence of the Prosecutor went without saying under international law and merely strengthened the principle that investigation and prosecution should be triggered by complaints.

14. The move to authorize only limited reservations might considerably reduce the number of States parties acceding to the Statute, so that a more flexible attitude must be adopted. If that were not done, the incorporation of Statute provisions in domestic law would certainly raise basic constitutional problems during ratification or accession procedures. Entry into force on the basis of a very few ratifications and accessions might deprive the Court of the necessary authority to act on behalf of the international community. A balanced solution fixing the number at a minimum of one third of the members of the United Nations should therefore be found.

15. A flexible and realistic approach must be taken to the establishment of the Court in order to ensure the support of the international community. Efforts should be made to work out the best possible Statute, not the ideal Statute, so that a large number of States could support it, which was the essential precondition for the legitimacy of the Court and its universal character.

16. **Mr. SANGIAMBUT** (Thailand) said that tribunals set up to deal with specific situations did not offer an appropriate means of prosecuting all international crimes. He hoped to see the establishment of a permanent, independent and truly impartial international criminal court.

17. The International Criminal Court should in no way supersede national courts but must complement national judicial systems, trying a person only where a national court had proved to be genuinely ineffective or unavailable.

18. The International Criminal Court could be a credible alternative mechanism in the suppression of crimes relating to narcotic drugs, since cooperation through bilateral agreements or Interpol was ineffective. His country had therefore proposed that illicit traffic in narcotic drugs and psychotropic substances should fall within the jurisdiction of the International Criminal Court.

19. To ensure the early, effective and continuous functioning of the Court, it should be financed initially from the budget of the United Nations. Thereafter, when the number of States parties was adequate, the latter should assume responsibility for financing the Court.

20. **Mr. GONZALEZ GALVEZ** (Mexico) recalled that efforts to create a permanent international criminal court could be traced back to the Codification Conference held at The Hague in 1909. Those efforts had not been very successful, and, if the present Conference were to avoid a similar fate, realism and a spirit of cooperation to find common ground would be required.

21. He fully supported the creation of a permanent court, which would have clear advantages over the ad hoc tribunals established by such organs as the Security Council. The Court should be independent and, unlike the International Court of Justice, should not be linked to the United Nations. Its impartiality and the legal certainty of its decisions must be guaranteed, and its Statute must provide essential guarantees of due process, including those specified in article 14 of the International Covenant on Civil and Political Rights.

22. The success of negotiations at the Conference would depend on how the principle of complementarity was formulated. While it could not be based on the consent of States, there must be clear safeguards to prevent the infringement of national sovereignty. He would, therefore, submit proposals concerning draft article 15. At the same time, he announced the withdrawal of the alternative formulation of that article contained in the report of the Preparatory Committee. The purpose was to give a clear definition of cases when the Court could act, by stating that the Court was not established to replace national judicial systems, but to complement them in punishing the international crimes set out in the Statute.

23. Initially, the jurisdiction of the Court should be limited to genocide, crimes against humanity and war crimes, which should include crimes against women and children, especially involving sexual assault.

24. Individual responsibility for the crime of aggression would be acceptable to his country only if it were not linked to the contention that only the Security Council could determine the existence of aggression. The Court's jurisdiction should apply only to individuals and not to States. It should be financed independently by the States parties.

25. **Mr. ZAMIR** (Bangladesh) said that the Diplomatic Conference offered a rare opportunity for the international community to put in place a system of justice to redress unspeakable crimes. The Court must be independent and free from possible interference in its judicial process. It should have inherent jurisdiction over core crimes and also enjoy a wide measure of acceptance and support. His country already had a comprehensive law for the punishment of crimes against humanity and breaches of the Geneva Conventions.

26. He strongly supported giving full effect to the common article 3 of the 1949 Geneva Conventions. The distinction between international and non-international conflicts was becoming increasingly irrelevant, viewed in

terms of universal peace and security. Attacks on humanitarian workers and international peacekeeping personnel should be included within the jurisdiction of the Court. Systematic sexual violence and gender crimes during periods of conflict should be defined in explicit terms as crimes against humanity and as war crimes. Finally, he believed that the list of war crimes should be expanded to cover the use and threat of use of nuclear weapons and expressed his support of the position of the Non-Aligned Movement on nuclear proliferation.

27. High standards of international criminal law and justice demanded that the crimes to be included in the Statute should be defined with clarity and precision for the sake of deterrence and the integrity of the new process.

28. The Court should be financed in the initial stages from the regular United Nations budget, to ensure global participation.

29. **Mr. IMBIKI** (Madagascar) said that it was the legitimate concern of the community of nations to ensure that atrocious crimes did not go unpunished. He called on government leaders and all peace-loving and justice-loving men and women in civil society to use their influence to bring about the establishment of an international criminal court. International law would then prevail, so that no State or military leader would feel free from prosecution and punishment for acts against humanity and human rights.

30. The Court should be independent, impartial and effective and should respect the rights of self-defence according to internationally accepted standards and standards of sovereignty. It must have jurisdiction to rule in the interest of victims and to protect the safety of witnesses. To ensure its lasting credibility, its composition must reflect a well-balanced geographical distribution. The Hague, with its experience of international justice, should be the seat of the Court.

31. He shared the general agreement that the crimes of genocide, aggression, war crimes and crimes against humanity should be included in the Statute, and also, in view of their exceptional gravity, trafficking in narcotic drugs and psychotropic substances, the deposit of toxic or nuclear waste within the territory of a State, the sale of arms or munitions to governments not recognized by the international community or to military leaders, except in cases authorized under international law.

32. It might be argued that including the latter offences would make the Court ineffective. However, one of the Court's objectives was to deter criminal acts leading to the mass destruction of human lives. Therefore, if his proposal was not accepted, he would propose that the Final Act of the Conference include a review clause, so that the subject could be taken up at a later time.

33. The ICC should take up cases only on the basis of complementarity. As long as a State had the capacity to undertake an investigation and open proceedings itself, the Court should not intervene. However, its intervention would be fully justified when governments prosecuted their predecessors in office out of motives of revenge.

34. Failure by the Security Council to determine aggression, or deal in such determination, had led to massacres. For reasons of efficiency and to separate prosecution before the Court from the political concerns of the Members of the Security Council, the independent Prosecutor should have the power to trigger prosecution, without prejudice to the right of the Security Council or a State party to refer crimes to the Prosecutor. However, safeguards should be provided. For example, the Prosecutor's action could be made subject to authorization by the judges. On the other hand, the intervention of the Security Council would be necessary to compel States parties to enforce the sentences of the Court.

35. **Mr. KELLENBERGER** (Switzerland) said that the goal of the Conference was to establish a permanent international court to punish crimes such as genocide, war crimes, and crimes against humanity committed by individuals, whenever national courts could not or would not perform their duty. The emerging concept of individual international responsibility, foreshadowed by the Nuremberg and Tokyo trials, had been confirmed by the establishment of the ad hoc Tribunals for the Former Yugoslavia and Rwanda. The task of the Conference was to consolidate that advance by creating a permanent international criminal court with the greatest possible effectiveness and universality.

36. However, the Court must have the means for the effective performance of its task. It should have mandatory jurisdiction over the States parties to its Statute, without being subject to reservations or the consent of States or United Nations organs. Otherwise, it might be reduced to the level of an *à la carte* tribunal, a sham institution incapable of taking effective action.

37. The acts within the competence of the new Court must be defined in terms of contemporary international law. Such definition was necessary because the barbaric acts that had characterized many modern international or internal conflicts or even situations that could not count as armed conflicts must not go unpunished. However, he shared the view that in order to preserve the distinctiveness of the new institution, it must focus on the most serious acts: genocide, war crimes, and crimes against humanity.

38. Enforcement at the international level against those three types of crime was of concern to the whole human community. Not only States and the Security Council but also the Prosecutor, whose duty it was to represent that community, should therefore be able to trigger enforcement.

39. The establishment of the International Criminal Court should not relieve national courts of their duty to punish individual acts that contravened the law of nations. Those authorities should be set aside only where they were not discharging their duty or doing so inadequately. He therefore supported the principle of complementarity, but not if it were formulated in such a way as to encourage impunity.

40. **Mr. SIMELANE** (Swaziland) fully associated himself with the statement made earlier on behalf of the Southern African Development Community (SADC). The resurgence of crimes against humanity had once again underscored the need to establish an effective judicial mechanism to end impunity and bring the perpetrators of heinous crimes to justice. He attached great importance to the success of the Conference, in helping to create a world in which peace and justice reigned supreme.

41. In keeping with the principle of sovereignty of States, the jurisdiction of the Court should not replace that of national courts, but should be applicable only in respect of core crimes where national judicial systems had collapsed or were unable to act. To be truly effective, the ICC should have inherent jurisdiction over all the core crimes. A requirement for the consent of States would render it ineffective.

42. To guarantee its universality, impartiality and independence, the Court must be free of political motivations. He hoped that an acceptable solution would be found regarding the role of the Security Council in its discharge of its obligations under Chapter VII of the Charter.

43. Furthermore, the independence and effectiveness of the Court would depend largely on its ability to exercise jurisdiction when a national criminal justice system had failed. He therefore fully supported the view that the Prosecutor should be able to initiate proceedings ex officio and need not rely on a complaint by a third party in

order to proceed. Information obtained from a source considered reliable by the Prosecutor should be a sufficient basis for the initiation of proceedings.

44. He emphasized that, to enhance the Court's permanence, legitimacy and authority, it should be established by a multilateral treaty, and not be made a subsidiary organ of the Security Council or the General Assembly. However, as an expression of the international community's resolve to suppress the crimes covered by the Statute, it should be linked with the United Nations.

45. **Mr. VENGADESAN** (Malaysia) said that, in principle, he supported the establishment of an international criminal court.

46. He agreed that the Court should complement and not replace national courts. In setting up a court to judge those who had committed very serious crimes abhorred by the international community, the national sovereignty of all nations must be upheld.

47. It was of paramount importance that the Court be truly independent, fair, effective and efficient, so that it could dispense justice in accordance with principles acceptable to the international community, bearing in mind diverse legal systems and cultures.

48. The core crimes of genocide, war crimes and crimes against humanity should be included in the Statute, though his delegation had expressed certain reservations during the Preparatory Committee meetings. He did not, however, support the inclusion of the so-called treaty crimes, because they were best left to the national courts.

49. The question of the trigger mechanism was inevitably related to the question of acceptance of the Court's jurisdiction and would have implications for the jurisdiction of national criminal courts; hence, sovereignty should always be upheld. To protect sovereignty he could consider supporting the opt-in mechanism or the "case-by-case" approach. The consent requirement should not be extended to the State of the nationality of the victim or the accused.

50. Whilst the Prosecutor should be able to act independently in discharging his duties, it was equally important that he or she should not be empowered to initiate an investigation *proprio motu* in view of the principle of complementarity and the danger of adverse effects on the integrity and credibility of the office and possible accusations of bias. Furthermore, effective investigation by the Prosecutor would depend on the full cooperation of States, especially of those which had a direct interest in the case.

51. **Mr. NYASULU** (Malawi) fully endorsed the statement made on behalf of the Southern African Development Community (SADC).

52. The idea of establishing a permanent international criminal court had long been on the international agenda. It was now time to conclude work on the Statute and make the international order complete and secure for present and future generations. However, while he supported the early establishment of a permanent international criminal court, he pointed out that certain aspects should not be ignored.

53. First, the Court must be independent, able to command the respect of all nations and of those on whom it would sit in judgement, being immune from outside influence.

54. Secondly, it must be impartial, dispensing, and seen to be dispensing, international justice. The Court must be fair and just.

55. Thirdly, it must be an effective court, with adequate power to fulfil its mandate and, as the final outcome, bring an end to impunity. It would complement rather than compete with national criminal justice systems.

56. The Court would make the fate of victims one of its principal concerns and would have powers to order rehabilitation or reparations.

57. He supported the proposal by the Netherlands to host the Court.

58. **Mr. SLADE** (Samoa) said that the aspiration to establish a permanent international criminal court had occupied the international community for much of the twentieth century, which had experienced the horrors of two world wars and the atrocities of countless civil conflicts. The time was ripe for the establishment of such a court. Ad hoc measures were never sufficient, as the Tribunals for the Former Yugoslavia and Rwanda had shown. A court of international criminal justice would contribute significantly to the maintenance of international peace and security. With clear provisions relating to its powers and jurisdiction, such a court would constitute an effective global deterrent. It was unacceptable that very serious crimes should go unpunished.

59. The Court should have inherent jurisdiction over the core crimes of genocide, crimes against humanity and war crimes, no matter where they were committed. It should be an effective complement to national courts when the latter were unable or unwilling to bring to justice those responsible for grave crimes.

60. Methods of warfare such as the use of nuclear weapons or of weapons which were inherently indiscriminate should also be covered in the Court's Statute, bearing in mind the recent advisory opinion of the International Court of Justice concerning the legality of the threat or use of nuclear weapons.

61. There was now significant consensus in customary international law regarding the protection of women and children, so that gender-related crime should be included in the Court's Statute. The Court would not be best equipped to deal with the needs of young persons and should not have jurisdiction over persons under 18. There should also be provision for the special needs of victims, including payment of compensation, as well as provision for the welfare and security of witnesses.

62. An independent prosecutor would be essential. The Prosecutor should have the power to initiate investigations *proprio motu*, based on information from any source, subject only to appropriate judicial scrutiny. Effective judicial independence must be ensured. No political body, including the Security Council or States themselves, should be allowed to stop or delay an investigation or prosecution.

63. A State that became a party to the Statute must accept the Court's jurisdiction without reservation. The Court should be funded through the regular budget of the United Nations according to the set scale of contributions. Voluntary contributions could also be made. That held out better prospects for universal participation, and for the Court's long-term financial security.

64. **Mr. AL-THANI** (Qatar) said that mankind categorically condemned war crimes, crimes against humanity and genocide, yet very few of the perpetrators had been prosecuted. The day when the United Nations established war crime tribunals in Bosnia and Herzegovina and Rwanda was the beginning of a process leading to the

establishment of a permanent international criminal court, which aimed not only to ensure the victory of truth and justice and the prosecution of criminals but also to spread peace and stability throughout the world.

65. He looked forward to the establishment of a permanent, independent, effective court, empowered to discharge specific tasks, yet not a substitute for national courts. His aspiration was for a court that would effectively put an end to the crimes of aggression, genocide, and war crimes and bring justice for all communities.

66. The role of the Prosecutor should be confined to receiving complaints from the Security Council or from the Member States; he or she should not be empowered to initiate proceedings *proprio motu*.

67. **Mr. AL-BUSAIDY** (Oman) said that he looked forward to the establishment of an international criminal court which would help to put an end to bloodshed and prosecute those responsible for such heinous crimes as ethnic cleansing, aggression, genocide, torture and the forcible transfer of defenceless civilians. It was heartening that the issue was no longer whether it was possible to establish an international criminal court but rather how to establish a highly effective court.

68. The lessons of the ad hoc Tribunals for the Former Yugoslavia and Rwanda had confirmed the need for the establishment of an international criminal court. By helping in the development of international law and procedures, however, those Tribunals had paved the way for the establishment of a highly effective court. He paid a tribute to the part played by non-governmental organizations in that effort.

69. The Court should have jurisdiction to prosecute the perpetrators of brutal crimes and to administer justice to all without distinction. Its sphere of competence should be made clear. He supported the inclusion of genocide, crimes of war and crimes against United Nations personnel in the jurisdiction of the Court, as well as the crime of aggression as defined in General Assembly resolution 3314 (XXIX) of 14 December 1974. A distinction should be made between aggression and the right to armed struggle in exercise of self-determination. Crimes against humanity should be clearly defined.

70. The Court should be complementary to national courts, replacing them only when it was determined that an effective national system of justice was unavailable. Only States and the Security Council should be permitted to bring a case to the Court. The Prosecutor should not have the right to institute an action in the Court *proprio motu*. The Court should be technically and financially independent, although it must be linked to the United Nations. He saw no justification for the inclusion of a statute of limitations with regard to heinous crimes.

71. Allowing States to voice reservations as called for by the Vienna Convention on Diplomatic Relations would make possible more accessions to the Statute.

72. **Mr. SOARES** (Cape Verde) said that, in the course of the century that was drawing to a close, the world had witnessed a series of events which constituted an affront to humanity. It was unacceptable that some crimes continued to go unpunished and that fundamental human rights were disregarded. For those reasons, Cape Verde had from the very beginning supported the idea of establishing an international criminal court.

73. The new Court should have well-defined jurisdiction and powers to prosecute crimes against humanity which were not prosecuted by existing institutions. Such a court should not focus exclusively on crimes at the international level but should also prosecute crimes committed in a national context which were not dealt with in the most effective way at that level. The Prosecutor should enjoy independence so that the institution could have the necessary credibility.

74. He supported the establishment of a permanent, independent international court based on the principle of complementarity and with jurisdiction over war crimes, genocide, crimes against humanity and crimes of aggression, in both international and internal armed conflicts.

75. He welcomed the offer by Netherlands to host the Court in The Hague.

76. **Mr. ADAMOU** (Niger) said that his delegation subscribed to the institution of a permanent, independent, impartial and effective international criminal court, which should have jurisdiction to prosecute crimes against humanity, war crimes, crimes of aggression and genocide. The Prosecutor must be independent and must be able to open proceedings *proprio motu*.

77. The Court should not abide any interference. The Security Council and States must in no case delay or interrupt investigation and prosecution by the Court.

78. The Court should take up cases within its jurisdiction only if national courts were not able to bring to justice those responsible for such crimes. The role of the Prosecutor and the rules of procedure and of evidence should be specified in the Statute.

79. To make the Court independent and impartial, it should be financed through the United Nations system, on the basis of the prorated contributions of Member States to the regular budget of the United Nations.

80. **Mr. NGUYEN BA SON** (Viet Nam) welcomed the establishment of the Court because it was widely recognized that international criminals should not go unpunished but that few of the many efforts to deal with international criminal offences had proved adequate, effective or comprehensive. He fully supported the Declaration by the Non-Aligned Movement on the establishment of an international criminal court. The Court must be independent, fair, impartial and effective. As an international judicial body, it must not be influenced by political, financial or other considerations. Its independence and impartiality would not only ensure its effectiveness in fulfilling its mandate but also attract accessions from Member States.

81. The principle of complementarity should be set forth clearly in the Statute, which meant that the Court should not replace national judicial systems. In principle, States would have prior jurisdiction over all relevant cases, and the Court's jurisdiction should be limited to the core crimes of genocide, crimes of aggression, crimes against humanity and war crimes. He strongly supported the inclusion of aggression as an international crime.

82. The principle of the primacy of national jurisdiction, namely, the rights and obligations of States concerned to investigate and prosecute crimes falling within their jurisdiction, had been broadly accepted in international law. Any action by the Court without the prior consent of the States concerned would constitute an encroachment of State sovereignty.

83. International cooperation and judicial assistance by the States parties to the Statute were also of great importance. The Court could effectively fulfil its mandate only through effective cooperation with the States in which the crimes had been committed or the States of the nationality of the offenders or the victims.

84. The principle of equitable geographical distribution should be reflected in the composition of the Court, with appropriate representation of different areas and different legal systems. With the aim of promoting the Court's universality, the Statute should be adopted by consensus. He was in favour of the inclusion of a provision on reservations.

85. **Mr. IBRAHIM** (Nigeria) said that his country supported the creation of a permanent international criminal court to deal with serious crimes such as genocide, crimes against humanity, war crimes and crimes of aggression. However, its jurisdiction must be properly defined, and its Statute must be drafted so as to preserve the cardinal principle of sovereignty of States. The judicial functions of the Court must not be prejudiced by political considerations or by actions of the Security Council.

86. He was convinced that an effective international criminal justice system complementary to national systems would contribute towards the maintenance of international peace and security. The use or threat of use of nuclear weapons, the use of anti-personnel mines and other weapons of mass destruction should be defined as war crimes. Similarly, crimes related to international terrorism, money-laundering, drug trafficking, and crimes against the United Nations and associated personnel should come under the jurisdiction of the Court. Those were of as much concern to the international community as the four core crimes.

87. He had a reservation about the proposed role of the Security Council. While there should be a relationship between the United Nations and the Court under an agreement, he was opposed to conferring on the Security Council the exclusive right to determine when aggression was committed and to refer such cases to the Court. The Court should not be encumbered at the outset by avoidable political influences. The power of the Security Council under Chapter VII of the United Nations Charter should not extend to the Court.

88. He also had a strong reservation to the ex officio powers of the Prosecutor under article 12 of the draft Statute. Giving the Prosecutor such power without any safeguards might entail the risk of political manipulation, which would not augur well for the independence of the Court.

89. He endorsed the proposition that the Court should be complementary to national criminal justice systems and should operate in cases where trial procedures did not exist or might be ineffective. However, it was not yet clear who should determine how and on what criteria a national system would be assessed to be ineffective. In that connection, he reiterated his full support for the collective African position set out in the OAU Declaration on the Establishment of an International Criminal Court, adopted at Ouagadougou, Burkina Faso, in June 1998. That Declaration underlined, *inter alia*, that the cardinal principle of the sovereignty of States should be preserved in the Statute of the Court, and that the Court should be complementary to national criminal justice systems and be based on the consent of the States concerned. A similar declaration had been made in May 1998 by the Ministerial Meeting of the Coordinating Bureau of the Non-Aligned Movement in Cartagena, Colombia.

90. An effective, independent and impartial international criminal court must enjoy the confidence of States parties. It was therefore imperative to observe the principle of equitable geographical distribution in the composition of the Court. It must be free from political influences of any kind and independently financed.

91. **Mr. MANIWA** (Democratic Republic of the Congo) said that despite the existence of texts to protect and promote human rights, the world had witnessed unprecedented depths of barbarity. The international community had proved powerless to prevent atrocities or even punish the perpetrators. Indeed, his own country had suffered the influx of millions fleeing from the genocide in Rwanda. His delegation therefore believed that the creation of an international criminal court was an imperative need.

92. As a member of SADC, his country shared that Organization's position as set forth by the representative of South Africa. In particular, he supported the creation of an effective, independent, impartial, efficient, universal international criminal court. Its composition should reflect equitable geographical distribution. General principles of criminal law should be observed, namely, non-retroactivity, *non bis in idem*, *nullum crimen nulla poena sine*

lege, respect for the rights of the defence, and the presumption of innocence. There should be complementarity between the Court and national courts, cooperation between States and compensation of victims.

93. In addition, the Court should be able to function without interference from any other organ, especially the Security Council. The Prosecutor should be sufficiently independent and protected from outside influence, integrity and competence being essential qualifications. The Court should have jurisdiction to deal with genocide, war crimes and crimes against humanity and other offences to be defined by the Conference. He supported the candidature of The Hague as the seat of the Court.

94. **Mr. LEWIS** (United Nations Children's Fund—UNICEF) said that the establishment of an effective and fair international criminal court would send the unequivocal message from the international community that heinous violations of human rights could not go unpunished. He associated himself with the views expressed by the Secretary-General of the United Nations and the United Nations High Commissioner for Human Rights.

95. The rights of children and women, overwhelmingly the primary targets in conflicts as victims, witnesses, manipulated and abused participants, were a matter of great concern to UNICEF, and should be recognized under the Statute. There was growing evidence that sexual abuse and gender-based violence had become an intrinsic strategy in armed conflicts. Events in Rwanda, the former Yugoslavia and recently Sierra Leone illustrated the horrifying levels of violence against women and girls, including rape, mutilation, forced pregnancy, sexual slavery and forced prostitution.

96. In keeping with the Convention on the Rights of the Child, the recruitment of children under 18 into armed forces or groups, or their direct or indirect participation in hostilities, should be considered as war crimes under the jurisdiction of the Court. Violence, rape and inducement or coercion into prostitution or other forms of sexual exploitation against children should be considered as war crimes.

97. The Court should have no jurisdiction over persons under 18, since it could not provide the rehabilitative emphasis which juvenile justice required. Moreover, the commission of serious crimes by children was often the result of indoctrination and manipulation by adults, who should be held accountable. The death penalty, life imprisonment or long periods of deprivation of liberty must not be applicable to children under 18. However, the Statute should promote measures for the rehabilitation and psycho-social recovery of child victims, whatever their age, in application of the Convention on the Rights of the Child. UNICEF further believed that schools, churches and hospitals should never constitute military targets and that the laying of anti-personnel landmines should be considered as a war crime. The Court should also have jurisdiction over attacks against humanitarian personnel when working in situations of potential violations of human rights.

98. **Mr. LINATI-BOSCH** (Observer for the Sovereign Military Order of Malta) said that the Order had devoted itself for nine hundred years to humanitarian aid, without distinction as to race, religion or nationality. He could not, therefore, remain indifferent to the creation of a new organ that would strive to prevent and punish international crimes, whether they originated from armed conflicts or not. Such a permanent international court would make an important contribution to public international order. The competence of the Court should cover genocide, war crimes, and the protection of human life. Its composition and its relations with sovereign States and the United Nations would need the most careful consideration, in order to ensure that the Court would be permanent, effective, independent, efficient, credible and trustworthy.

99. **Mr. MAHARAJ** (Trinidad and Tobago), speaking as Observer for the Caribbean Community (CARICOM), said that he attached great importance to the establishment of a strong, independent, impartial and effective court.

100. No judicial body could achieve and maintain respect if it was subject to political interference. While recognizing that the Charter responsibilities of the Security Council could not and should not be undermined, he emphasized that the Court must be free from any political interference by the Security Council.

101. The Statute of the Court must strike a balance between the desire to achieve justice on an international plane and full respect for the fundamental principle of the sovereignty of States. The principle of complementarity was most important; indeed, the Court should be empowered to act only where a national court was unwilling or unable to exercise jurisdiction.

102. While the Prosecutor should have a strong and independent position, it was of vital importance that proper safeguards be put in place to prevent any misuse or abuse of power.

103. He supported the inclusion of aggression within the jurisdiction of the Court, provided that an acceptable definition of that crime could be agreed upon. In view of the threat posed by the international drug trade, he urged the Conference to give serious consideration to the inclusion of drug-related crimes within the jurisdiction of the Court.

104. Many CARICOM States would have difficulty in accepting penal provisions which ruled out the death penalty for capital offences. Their concerns should be taken fully into account in the deliberations of the Conference.

105. He hoped that due consideration would be given to gender balance and equitable geographical distribution in the composition of the principal organs of the Court.

106. **Mr. ROTH** (Observer for Human Rights Watch) said that if the Court was to realize its deterrent potential against genocide, crimes against humanity and war crimes, it must be strong and independent. Allowing States to prevent the Court from exercising jurisdiction on a case-by-case basis would paralyse it and effectively turn the Security Council into the only trigger mechanism, with the attendant risk of vetoes by permanent Members. No Court that was seen as an arm of the Security Council would enjoy the credibility it needed to operate effectively. While the Security Council would have an active enforcement role, in practice enforcement would depend much more often on State cooperation, which in turn would depend on the Court's credibility and legitimacy.

107. To ensure that those responsible for all serious atrocities were brought to justice, even when individual States found it inconvenient, the Court must have an independent Prosecutor authorized to investigate and prosecute serious crimes wherever and by whomever committed.

108. The Court must have jurisdiction over the full range of serious crimes, including war crimes committed in internal armed conflicts, which constituted the vast majority of contemporary atrocities, as well as abuses specific to women and children.

109. There was widespread support for an independent, effective, impartial Court throughout Africa, Latin America and the Caribbean, Europe and Asia. However, in the light of the very strong guarantees against frivolous or unfounded prosecutions, which were to be enshrined in the Statute, he hoped that no country would insist on what amounted to immunity from prosecution. All States should remain true to their principles and create an effective tribunal with real deterrent impact. It would be wrong to accept a weak Statute in the unrealistic hope that it would be improved in the future.

110. **Ms. BEDONT** (Observer for the Women's International League for Peace and Freedom) said that, since its formation in 1915, her organization had been strongly committed to promoting world disarmament and the peaceful resolution of international conflicts. She shared the belief that the proposed International Criminal Court could be a tool for the promotion of peace worldwide. Lack of accountability for violations of human rights spawned a cycle of vengeance and violence that prevented the achievement of genuine and lasting peace. The International Criminal Court had the potential to break the cycle of violence by providing a means of redress for atrocities and by deterring heinous crimes. The Court's Statute must be equitable, so that the Court would have credibility and could provide an effective deterrent against heinous crimes.

111. The prohibition of weapons systems under the Statute should take a generic approach and should cover all weapons that caused unnecessary suffering, superfluous injury or that were inherently indiscriminate. A non-exhaustive list of weapons could be added, including landmines, laser weapons and nuclear weapons, which would allow judges flexibility to include present or future systems which fitted the general criteria. However, if the addition of the non-exhaustive list was too controversial, a statement of the general principles against indiscriminate and excessively injurious weapons would be a reasonable compromise.

The meeting rose at 1.05 p.m.